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APR 29 2008

**OFFICE OF PETITIONS**

In re Application of :  
E. Neil Lewis, et al. :  
Application No. 10/776,029 :  
Filed: February 10, 2004 :  
Attorney Docket No. S0001-002004 :

ON PETITION

This is a decision on the petition, filed April 3, 2008, which is being treated as a request under 37 CFR 3.81(b)<sup>1</sup> to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent to be issued from the above-identified application.

The request is **DISMISSED**.

Petitioner indicates that all the names of the assignees were not listed on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignees on the front page of the Letters Patent in the patent to be issued from the application.

37 CFR 3.81(b), effective June 25, 2004, reads:

*After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter).

<sup>1</sup> See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The instant request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). As petitioner has failed to comply with the provisions of 37 CFR 3.81(a), the request cannot be granted.

A review of Office database assignment records reflects that an assignment to MALVERN INSTRUMENTS INCOPORATED **and** THE GOVERNMENT OF THE UNITED STATES OF AMERICA, AS REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, has been recorded. Therefore, upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that The Government of the United States of America, as represented by The Secretary, Department of Health And Human Services was also an assignee of record at the time of issuance of the application into a patent. *Note also 35 U.S.C. § 152.*

**In view of the above and after issuance of the instant application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which adds THE GOVERNMENT OF THE UNITED STATES OF AMERICA, AS REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, as an assignee. No certificate of correction will be issued which adds an assignee other than the assignee set forth in the instant request. A copy of this decision must accompany the request for a Certificate of Correction.**

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in the instant request, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Alternatively, if petitioner desires to have the correct assignee data appear on the front page of the Letters Patent, petitioner may wish to consider filing a petition to withdraw the subject application from issue under 37 CFR 1.313(c)(2). The petition to withdraw from issue under 37 CFR 1.313(c)(2) must be accompanied by a request for continued examination (RCE) and submission (which may be a request under 37 CFR 3.81(b)).

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. After the submission by petitioner of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions